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U.S. Citizenship and Immigration Services

[redacted]

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FILE: LIN 05 273 52498 Office: NEBRASKA SERVICE CENTER Date: JAN 23 2007

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral fellow at the University of Chicago. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Six witness letters accompany the petitioner's initial filing. We shall discuss examples of these letters here. Four of the witnesses (including two whom counsel labels "Independent Evaluator[s]") are on the faculty of the University of Chicago. A fifth worked with the petitioner at the Chinese Academy of Medical Sciences. The most independent witness appears to be Dr. [redacted] an assistant professor at the University of Texas, El Paso. Dr[redacted] states:

> Although I have never worked with [the petitioner], I have read his resume and all his papers published in the distinguished journals, and I am very impressed by his outstanding research abilities. I believe he is an extraordinarily talented researcher in the field of cancer therapy. [The petitioner] made . . . important discoveries before he obtained his Ph.D.

Dr[redacted] then describes several of the petitioner's accomplishments in technical detail, and asserts that the petitioner has earned "international recognition" for achievements such as "[h]is pioneering paper [in] *Leukemia research*."

Professor[redacted] of the University of Chicago states:

> My research focuses on understanding how the immune system recognizes cancer and how it rejects cancer. The most important and efficient way of controlling tumors by using the immune system is to activate tumor specific T cells and enhance their response to tumor cells. Improving the strategy in immunotherapy against tumors is greatly dependent on basic knowledge of T cell development and function. Therefore, it is vital to understand how T

cells can be made to recognize targets on cancer cells that can be used for cancer cell destruction.

[The petitioner] is an unusual and absolutely outstanding researcher . . . [who] has made phenomenal progress since he came [to my laboratory] a year and a half ago. He has developed new screening procedures and has become a nation-wide resource for advice also helping others to participate. He has now developed ingenious new approaches to apply his findings to various human cancers in the year to come. His work will be important for several important diseases even outside the cancer field, i.e., with regards [*sic*] to immunological tissue destruction in infectious disease, autoimmunity, [and] transplant rejection.

Professor [redacted] of the University of Chicago states:

During the past one year we shared a very closer [*sic*] collaboration with [the petitioner] serving as the "point man" in the Schreiber laboratory. . . . [The petitioner's] research . . . has the potential to enhance our understanding of how CD8+ T cell recognizes the microenvironment inside tumors and reveal new targets for therapeutic treatment of cancer. His research is studying which cells in the stroma become targets for the CD8+ cytolytic T lymphocytes (CTL), exploring the mechanism(s) used by the CTL's to destroy stromal cells and develop ways for increasing loading of cancer stroma with the antigen produced by the original cancer. . . .

The latest development in [the petitioner's] understanding of cancer immunotherapy has provided a new opportunity for a fundamental change of approaches to cancer therapy discovery. Rather than depending on traditional strategy of cancer therapy, he is now focusing on new cell targets essential for . . . preventing cancer from escaping immunotherapy or chemotherapy.

The initial submission includes documentation showing that ten of the petitioner's papers have been cited an aggregate total of 33 times. Only three of the ten papers have been cited more than twice, and only one (with 15 citations) has been cited more than five times. The petitioner lists the citing articles for four of these ten papers. The list accounts for 25 of the petitioner's 33 citations. Thirteen of these 25 citations are self-citations by the petitioner and/or his collaborators, including nine of the 15 citations of the petitioner's most-cited paper. Thus, the petitioner's initial submission documents no more than 20 independent citations of his work, spread over ten papers for an average of, at most, two independent citations per article.

The petitioner observes that a highly prominent scientist, Professor [redacted] is among those who have cited his work, but does not explain why a citation by Prof. [redacted] is intrinsically more important or significant than a citation by a lesser-known author.

On October 19, 2005, the director issued a request for evidence (RFE), stating that the petitioner must "establish eligibility for a national interest waiver . . . as detailed below, pursuant to Matter of New York

State Dept. of Transportation." The types of evidence "as detailed below," however, have nothing to do with the standards set forth in the precedent decision. The director requested evidence of the petitioner's membership in professional associations, evidence that the petitioner has "at least two years of full-time experience," and copies of payroll documents.

In response, the petitioner complied with the director's evidentiary requests, but counsel stated, correctly, that the types of evidence requested "are simply not germane to this case." The materials submitted are irrelevant because they neither qualify nor disqualify the petitioner for the waiver, and the petitioner's initial submission was sufficient to establish his eligibility for the underlying immigrant classification.

The director denied the petition on December 27, 2005, stating that the petitioner's response to the RFE failed to establish his eligibility for the national interest waiver. As we have noted, however, the RFE did not give the petitioner the opportunity to address the requirements set forth in *Matter of New York State Dept. of Transportation* because the specific evidence requested in that notice had nothing to do with the precedent decision. The director stated that "[c]ounsel and the petitioner may have found the Service's evidence request to be overly burdensome," and that "[i]t may also appear that the Service's evidentiary request inappropriately suggested the submission of documentation to demonstrate the petitioner's qualification for a range of immigrant classifications." The director, however, did not link these assertions to any substantive discussion of the RFE itself.

Counsel, on appeal, notes other errors in the director's decision. For instance, the director found that the petitioner's "evidence fails to clearly demonstrate that the benefits of the petitioner's research are national in scope," and that the mere potential for national scope is not sufficient. A review of the language in *Matter of New York State Dept. of Transportation*, however, shows that the "national scope" clause refers not necessarily to the specific alien, but to the occupation. Also, the precedent decision requires a showing that "the proposed benefit *will be* national in scope" (emphasis added). *Id.* at 217. Counsel correctly asserts: "Tumor immunology/Cancer research is very crucial to the development of more effective cancer therapy, which will significantly impact American people's health." The director's conclusion that the petitioner has failed to meet the "national scope" requirement rests on flawed logic, and we hereby withdraw that finding.

While parts of the director's decision correctly (if vaguely) identify the petitioner's field, counsel notes the director's statement that "the petitioner desires to continue her neonatal practice and/or infant mortality related research." This statement is erroneous, in regard to both the petitioner's profession and his gender, and it appears to have been copied without revision from another, unrelated decision.

Several new letters accompany the appeal, from witnesses in several countries. Witnesses include a winner of the Lasker Award and the National Medal of Science; the chairman of the Institute of Immunology at the University of Berlin, Germany; the head of the Immune and Gene Therapy Laboratory of the Cancer Center at the Karonlinska Institute, Stockholm, Sweden; and researchers at the Mayo Clinic and elsewhere. These distinguished researchers attest that the denial of the waiver application would forestall an important new avenue of research and, thereby, harm the national interest.

The initial submission documented, at best, a marginal rate of citation of the petitioner's published work. The number of citations has increased over time, however, and there now exist several dozen more citations of the articles that the petitioner had published before the filing date. This objective evidence corroborates and is consistent with the independent witness letters submitted on appeal. The petitioner did not submit this evidence in response to the RFE, but as we have shown, the RFE was seriously deficient and did not afford the petitioner an opportunity to provide the types of documentation and evidence discussed in *Matter of New York State Dept. of Transportation*. The denial notice, too, was flawed in several crucial respects, already enumerated, and thus cannot stand. These flaws would necessitate, at the very least, an order remanding the petition to the director for a new decision. We find, however, that the evidence accompanying the appeal is sufficient to justify, by preponderance of evidence, approval of the petition.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.